

Minute from the Hearing Panel – regarding:

The Hearing Panel's response to Beef and Lamb New Zealand Limited (B+LNZ) seeking to file supplementary expert planning evidence (revised planning provisions) for the Block 2 Hearing.

This Minute formalises the Hearing Panel's (Panel) oral decision made on 27 June 2019 to accept the updated 'marked-up' version of the plan change provisions attached to Ms Jordan's planning evidence for the Block 2 Hearing.

B+LNZ had lodged an updated marked-up version of the plan change provisions (supplementary expert planning evidence) from Ms Jordan. Mr Thomsen, B+LNZ legal counsel, stated in his Memorandum (25 July 2019) at paragraphs 2 – 4:

The amended proposed plan provisions have now been finalised and are attached to this memorandum as Appendix 1.

These proposed provisions replace those attached to Ms Jordan's 9 May 2019 evidence. They do not greatly change the provisions filed with Ms Jordan's evidence (changes are marked with a yellow highlight), but the drafting of the provisions has benefited from further review and reflection.

It is these provisions that will be addressed by Counsel and Ms Jordan at the hearing.

The Panel considered that, although few in number, the amendments Ms Jordan has made to the plan provisions were substantive in nature (including specifying numeric kgN/ha/yr values applying in different parts of the catchment for the purposes of the 75th percentile rule).

The Panel issued a Minute (dated 25 June 2019) requiring B+LNZ to seek leave if it wanted the Panel to consider whether or not to accept the supplementary evidence. This was based on the Panel's Hearing Procedures and Directions document (5 November 2018) which sets out at section 12 - Late or supplementary evidence (paragraph 60)

Late or supplementary evidence will only be accepted at a hearing session:

- a. where circumstances make it necessary for such evidence to be provided; and*
- b. with the leave of the Hearing Panel.*

The Panel also provided an opportunity for other parties to be heard on whether Ms Jordan's supplementary evidence should be received by the Panel. This was by either filing a memorandum or appearing at the hearing on the 27 June 2019. No party filed a memorandum or appeared at the hearing either supporting or opposing the acceptance of Ms Jordan's supplementary evidence.

Panel's Determination on the Supplementary Evidence

The Panel accept the supplementary evidence. The reasons for this are:

Mr Thomsen sought leave (orally) at the beginning of the hearing. He questioned whether the updated marked-up version of the plan change provisions could be characterised as "supplementary evidence". Notwithstanding this, he said Ms Jordan had 'signalled' in her evidence-in-chief that she may provide numeric values. At paragraph 62 of her evidence, she stated:

I am mindful that I have not proposed a percentile, but have indicated my preference is the 60th. I support consideration of a lower threshold than the 75th percentile notified and my preference is based on the evidence of Dr Dewes. However, it maybe that a precise value can be identified rather than a statistical measure. I will confirm my position at the hearing or before...."

Mr Thomsen noted that the numeric kgN/ha/yr values applying in different parts of the catchment for the purposes of the 75th percentile rule were the same numeric values as had separately been provided in the Block 2 evidence for Fonterra Co-Operative Group Ltd (Mr James Allen).

We do not regard Ms Jordan signalling that further evidence was coming as decisive. Such evidence remains 'late' and still needs leave to be produced. It is for the Panel to determine whether late evidence will be accepted. However, that reservation of position highlighted that Ms Jordan's evidence was incomplete in that regard. Filling the evidential gap thus created is 'necessary' in the sense used in the Panel's directions.

On the issue of prejudice, as Mr Thomsen notes, the numeric values were already 'in the public domain' and parties could have raised concerns about those values in rebuttal evidence or by way of submission. On this basis the Panel is satisfied that no prejudice arises.

While the numerical values were not the only amendments made by Ms Jordan, the Panel regarded the other amendments as being in the nature of clarification and that it was helpful to have on paper in advance of hearing her evidence, rather than substantively 'new' evidence that might potentially raise issues of prejudice to others.



Greg Hill

Chairman of the Hearing Panel.

28 June 2019